

Guidelines for Agreed Protective Orders District of Kansas

In certain cases, the parties may agree that discovery should be governed by a protective order limiting the disclosure and dissemination of confidential information. If the parties agree concerning the need for a protective order and its scope and form, their counsel should confer and either (1) e-mail a copy of their jointly-proposed protective order (in WordPerfect format) to KSD_<Judge's Last Name> _chambers@ksd.uscourts.gov, or (2) file a joint motion for protective order with the parties' proposed protective order attached as an exhibit to the motion. If the parties choose to file a joint motion for protective order, they should also e-mail a copy of their jointly-proposed protective order (in WordPerfect format) to KSD_<Judge's Last Name> _chambers@ksd.uscourts.gov. If satisfactory, the court will sign the proposed protective order and cause it to be filed. If not satisfactory, the court will deny the motion, notify counsel of any objectionable language or provisions, or sign a modified order.

If the parties disagree concerning the need for a protective order and/or its scope or form, the party or parties seeking such an order should file an appropriate motion (with the proposed protective order attached) and supporting memorandum by the date provided in the Scheduling Order. Where there is an objection based upon the scope or form of a proposed order, the party or parties opposing the motion shall, as part of their written response to the motion, provide the court with proposed language that they believe would resolve their specific objections to the proposed order.

The following guidelines have been developed to assist the parties in drafting stipulated or agreed protective orders:

1. Recitation of Facts Showing Good Cause Under Fed. R. Civ. P. 26(c)

As indicated in the Scheduling Order, any jointly-proposed protective order must include,

in the first paragraph, a concise but sufficiently specific recitation of the particular facts in the case that would provide the court with an adequate basis upon which to make the required finding of good cause pursuant to Fed. R. Civ. P. 26(c).

2. Scope of the Protective Order

The protective order must be narrowly tailored and not overbroad. It should include a sufficiently narrow identification of the categories of documents, information, items or materials (which may include electronically created or stored information) that are subject to the protective order. Some examples are medical records, personnel files, and tax returns. Language such as “this protective order shall apply to all documents the party designates as confidential” or “this protective order shall apply to all business records” would be deemed too vague and overbroad.

The protective order should clearly reflect that its provisions only apply to the named categories of documents, information, items or materials specifically set forth in the protective order.

3. Blanket Provisions for Filing Under Seal

The protective order should not contain a blanket “filing under seal” provision. If the parties wish to include a provision for filing confidential materials under seal, then the protective order should state that the party seeking to file confidential information must first file a motion with the court and be granted leave to file the particular document under seal. *See, e.g., Holland v. GMAC Mortg. Corp.*, 2004 WL 1534179, at *2 (D. Kan. June 30, 2004) (setting forth standard for obtaining leave to file documents under seal); *Worford v. City of Topeka*, 2004 WL 316073 (D. Kan. Feb. 17, 2004) (same).

4. Application to Non-Parties

The protective order should refrain from stating that it is binding on non-parties or that the

court has jurisdiction over non-parties to enforce the provisions of the protective order. The court cannot order a non-party to abide by the terms of a protective order or to consent to jurisdiction. Although the protective order itself may not order a non-party to abide by the terms of the protective order, the parties may attach a form agreement to the proposed protective order. By signing the agreement, the non-party may agree to be bound by the terms of the protective order.

5. Jurisdiction

Ordinarily the court's jurisdiction, including jurisdiction to enforce the protective order, is terminated upon final disposition of the case. The parties may, however, include a provision in the protective order that a party may seek leave to reopen the case to enforce the provisions of the protective order.

6. Instructions to the Clerk of the Court

The protective order should not direct the clerk of the court to return or destroy confidential documents that are filed in the case. This language conflicts with the policy of the clerk's office to not remove or destroy any documents filed in a case.

7. Court Personnel and Jury Members

The protective order should not state that it is binding on court personnel or members of the jury or should provide an exception for court personnel and members of the jury.